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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1969**

Lois Minch,
Personal Representative of the Estate of
A. R. Minch, deceased,
Appellant,

vs.

Buffalo-Red River Watershed District,
Respondent.

**Filed October 28, 2008
Affirmed in part and reversed in part
Worke, Judge**

Clay County District Court
File Nos. 14-C9-05-000048, 14-C0-05-000049

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Considered and decided by Worke, Presiding Judge; Klaphake, Judge; and
Peterson, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Following a remand from this court in this ditch-law dispute, appellant argues that
(1) the district court abused its discretion in denying the motion for attorney fees and

costs based on an erroneous finding that there was no “prevailing party,” and (2) the procedural history of the case precludes the reinstatement of a previously vacated judgment for costs. We affirm the district court’s denial of appellant’s motion for attorney fees and costs and reverse the district court’s reinstatement of the \$1,932 cost judgment.

FACTS

The background facts of this matter can be found in *Minch v. Buffalo-Red River Watershed Dist.*, 723 N.W.2d 483, 485-86 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). In that decision, this court reversed the district court’s determination that respondent Buffalo-Red River Watershed District has the authority to order a private citizen to clean the ditch under Minn. Stat. § 103D (2006) and remanded for further proceedings to determine whether the siltation in the ditch constituted an obstruction under Minn. Stat. § 103D.075 (2006).

On remand, the district court found that the parties agreed that the obstruction was not caused by appellant Lois Minch, Personal Representative of the Estate of A.R. Minch, deceased. Respondent cleaned out the ditch and absorbed the costs as an ordinary cost of doing business. The parties then filed cross-motions for attorney fees and costs. Following a hearing, the district court found that both parties had both prevailed on certain issues and concluded that there was no prevailing party. Therefore, the court declined to exercise its discretion to award attorney fees, costs, or disbursements to either party. This appeal follows.

DECISION

Prevailing Party

Appellant argues that the district court abused its discretion in denying her motion for attorney fees and costs under Minn. Stat. § 103D.545, subd. 3 (2006) based on a finding that there was no prevailing party.

Minn. Stat. § 103D.545, subd. 3 provides that “[i]n any civil action arising from or related to a rule, order, or stipulation agreement . . . the court may award the prevailing party reasonable attorney fees and costs.” The Minnesota Supreme Court has held that “[t]he prevailing party in any action is one in whose favor the decision or verdict is rendered and judgment entered.” *Borchert v. Maloney*, 581 N.W.2d 838, 840 (Minn. 1998). And when determining which party, if any, is prevailing, a district court should consider “the general result” and make an “inquiry [] as to who has, in the view of the law, succeeded in the action.” *Id.* “[T]he district court retains discretion to determine which party, if any, qualifies as a prevailing party.” *Benigni v. County of St. Louis*, 585 N.W.2d 51, 54-55 (Minn. 1998). When both parties “prevail” on certain issues, the district court has discretion to conclude that neither party is a prevailing party. *Id.* at 55.

In September 2005, the district court entered summary judgment in favor of respondent. The district court found that respondent prevailed in the rulings that the ditch at issue was part of a drainage system under chapter 103E, had broad authority over the ditch under that chapter, had the authority to order appellant to clean the ditch if the evidence established that the obstruction was intentionally caused by appellant’s wrongful conduct, and had the general authority under chapter 103D to clean the ditch on

its own and assume the costs as a normal cost of doing business as a draining authority. Further, the district court found that appellant prevailed in the rulings that respondent did not have authority under chapter 103D to order appellant to clean the ditch, that the initial order was invalid because appellant did not receive proper notice and have an opportunity for a hearing, and that appellant's property interest in the ditch could not be infringed without due process of law. On remand, appellant also prevailed in the finding that the parties' agreed that the obstruction was not caused by appellant's actions and respondent cleaning the ditch and absorbing the costs as an ordinary cost of doing business. Because the district court's findings are supported by the record, it did not abuse its discretion in concluding that there was no prevailing party and denying appellant's motion for attorney fees and costs.

Cost Judgment

Appellant argues that the district court abused its discretion on remand in reinstating the cost judgment in the amount of \$1,932. The district court shall allow reasonable costs to a prevailing party in a district court action. *Benigni*, 585 N.W.2d at 54. "We review the district court's award of attorney fees or costs for abuse of discretion." *Brickner v. One Lane Dev. Co.*, 742 N.W.2d 706, 711 (Minn. App. 2007), *review denied* (Minn. Mar. 18, 2008).

In 2005, appellant filed two separate actions against respondent—file numbers C9-05-48 and C0-05-49. On September 23, 2005, the district court dismissed C0-05-49 pursuant to the agreement of the parties, and ordered appellant to pay \$1,932 in costs. In the same order, with respect to C9-05-48, the court granted respondent's summary-

judgment motion and ordered appellant to clean the ditch. Judgment was entered on the \$1,932 on October 14, 2005. On remand, the district court found that because neither party appealed the order assessing \$1,932 in costs against appellant, the order was final and must be upheld.

In November 2005, appellant's notice of appeal stated that he was appealing the "Order and Memorandum of the [district court] filed on [September 23, 2005], granting [respondent's] Motion for Summary Judgment and the related Judgment for costs filed on [October 14, 2005]." Therefore, appellant did appeal the cost judgment, and this court reversed that judgment. *Minch*, 723 N.W.2d at 492. Because the district court erred in finding that the cost judgment had become final because it had not been appealed, we reverse. We note that while the matter was also remanded for further proceedings, the sole issue on remand was whether the siltation in the ditch constituted an obstruction under Minn. Stat. § 103E.075.

Affirmed in part and reversed in part.